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IT IS AN OLD PRACTICE

Enactments That are Beyond the Constitution—Scope of Authority—Are Many Precedents.

(St. Louis Globe-Democrat.)

The anti-annexationists' objection that the country's new possessions will have to be ruled despotically for awhile is not particularly formidable. All the territory which the United States has gained since 1789 has, at the outset, been controlled by means which were despotic. This was true of Louisiana, Florida, the Mexican cession (California and New Mexico) and Alaska. It is inevitable from the circumstances of the case. Military rule must be employed in the beginning. A civil authority is never provided for an annexed territory immediately. Civil officers are appointed by the President as early as practicable after possession of the territory is gained, but necessarily the officials thus chosen are for a time dependent on the military arm. Congress can not at once devise a government for new territory. Such a task requires time. Until such a government is furnished the control must necessarily be such as the President's appointees, backed by the General in command, dictate.

Louisiana was acquired under the treaty of April 30, 1803, which was ratified by the Senate on October 19. The ratifications were promptly exchanged in Washington. Bonaparte's sanction having already been given and placed in the hands of his diplomatic representative in this country, and Jefferson, in a special message to Congress on October 21, asked for such "temporary provisions" for the preservation of order in Louisiana as "the case may require." A bill was rushed through Congress against a practically solid Federalist opposition, and signed on October 31, 1803, which met Jefferson's views, but which amazed some of Jefferson's party in the coming years.

"It was a startling bill," said Thomas H. Benton, writing long afterward, "continuing the existing Spanish Government, putting the President in the place of the King of Spain, putting all the territorial officers in the place of the King's officers, and in placing the appointment of all these officers in the President alone, without reference to the Senate. Nothing could be more incompatible with our constitution than such a government—a mere emanation of Spanish despotism, in which all powers, civil and military, legislative, executive and judicial, were in the Intendant General, representing the King; and where the people, far from possessing political rights, were punishable arbitrarily for presuming to meddle with political subjects."

Benton's characterization was not extravagant. The act of October 31, 1803 ,authorized the President, in order to maintain the authority of the United States in Louisiana, to "employ any part of the army and navy of the United States," and stipulated that "all the military, civil and judicial powers exercised by the officers of the existing government of the same (Spain's government) shall be vested in such person or persons, and shall be exercised in such a manner as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property and religion."

Louisiana did not yet come into actual possession of the United States, but the transfer was made on December 20, 1803, in New Orleans, for the lower end of the province, the change of sovereignty occurring on March 10, 1804, in St. Louis for Upper Louisiana. A bill, largely shaped by Senator Breckenbridge of Kentucky, to provide a territorial government for part of the province, was signed by Jefferson on March 26, 1804. This act divided the province on the thirty-first parallel, the line which was afterward the northerly boundary of the State of Louisiana, all south of the line receiving the name of the Territory of Orleans, and that part north of the line being called the District of Louisiana, which included what was later the States of Arkansas, Missouri and the others north and west of these two. The latter was made a dependency of Indiana Territory, which included Illinois as well as all the rest of the region north of the Ohio river except the State of Ohio, which was admitted a year earlier. The governor and the judges of the Territory of Indiana, it was provided, should have power to make all laws deemed by them to be conducive to the good government of the inhabitants of the District of Louisiana. For the Territory of Orleans, the lower end of the province, the act of March 26, 1804, provided that the legislative powers should be "vested in the Governor and in thirteen residents of the territory, to be called the Legislative Council, to be appointed annually by the President of the United States." The governor, with the consent of a majority of the Legislative Council, was empowered to "alter, modify or repeal the laws which may be in force at the commencement of this act."

That is to say, even after the act of October 31, 1803, which startled Benton by the autocratic powers which it conferred on the President and his appointees, and which was meant to be in force only a few months, a law followed which not only did not ask the consent of the governed, but paid no regard to their wishes. Martin, who was a competent observer, and who was on the ground at the time, writes in his "History of Louisiana" that the people of that territory "were greatly dissatisfied at the new order of things." They complained, he said, that the governor whom the President appointed "was an utter stranger to their laws, manners and language, and had no personal interest in the prosperity of the country." On March 3, 1805, an act was passed establishing in Louisiana a territorial government more closely resembling that of Mississippi Territory.

The Breckenridge, who took a prominent part in shaping the act of March 26, 1804, which carried the broad construction of the constitution to its extremest length, was the reputed author (Jefferson was the real author) of the Kentucky resolutions of 1798, which were strict construction's most ultra expression. The Thomas Jefferson who incited and signed that act which disregarded the consent of the governed and opposed the governed's wishes was the Jefferson who wrote the Declaration of Independence.

At the outset in Florida as little regard for the consent of the governed was shown as was displayed in the case of Louisiana. On February 22, 1821, President Monroe announced to Congress that the Florida annexation treaty, which had been signed just two years earlier, had been ratified by both Spain and the United States, and asked legislation for "carrying the same into execution." Congress passed a temporary act signed on March 3, extending to the new territory the United States revenue laws and the law against the slave trade. Andrew Jackson, whose campaigns in Florida in the war of 1812 against the British, and subsequently against the Indians, was the chief influence of impelling Spain to cede Florida, was made Governor in April, and his powers were limited by only two conditions—he should not impose new taxes and he could not confirm any land grants. In all other respects he had the same powers as were wielded by the Spanish Governors of Florida. This authority he employed with his usual vigor and decisiveness.

One of his old personal and political friends, writing many years afterward of Jackson's despotic rule in Florida, made a comment upon American government in the territories as it was administered in the nation's early days, which makes strange reading in later times, though the procedure in similar cases has not changed much in the lapse of years. "In the United States," said Thomas H. Benton, "where people are accustomed to the regular administration of justice, the summary proceedings of Gen. Jackson appeared to be harsh, and even lawless; but they were all justified by the administration and sanctioned by the negative action of Congress. And in Florida, where they took place, and where it was seen that no wealth or power could screen the oppressor, and that governors, judges and rich merchants were laid by the heels like common offenders, and the protecting shield of law and justice thrown over the humble and helpless—in this province, so long a prey to oppression and corruption, the conduct of Gen. Jackson appeared like an emanation of divine justice, greatly exalting the American character."

In the procedure regarding Florida, as in that relative to Louisiana, it was shown that the inhabitants of territories do not have the rights and privileges guaranteed by the constitution unless these are specially granted by Congress. Congress has a free hand in legislating for the territories. It can set up any form of government over them which it chooses. The guarantees of the constitution apply to states only. "What is Florida?" asked Webster, in an argument in the case of the American Insurance Company vs. Canter, in 1828. "It is no part of the United States. How can it be? How is it represented? Do the laws of the United States reach Florida? Not unless by particular provisions. The territory and all within it are governed by the acquiring power except where there are reservations by treaty. By the law of England, when possession is taken of territories, the King, jure coronae, has the power of legislation until Parliament shall interfere. Congress has the juse coronae in this case, and Florida was to be governed by Congress as she thought proper."

This doctrine received the specific sanction of the Supreme Court in that case. Chief Justice Marshall, in the decision rendered by the court, declared that the inhabitants of Florida "do not participate in political power; they do not share in the government until Florida shall become a state. In the meantime Florida continues to be a territory of the United States, governed by virtue of that clause of the constitution which empowers Congress "to make all needful rules and regulations respecting the territory or other property belonging to the United States." Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a state, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular state, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be source whence the power is derived, the possession of it is unquestioned." Jackson, therefore, as Governor of the newly acquired territory of Florida, was clearly within his powers when he, as Benton declared, "constantly repulsed the idea of the presence of the constitution in the territory committed to his charge, and in that repulsion he was sustained by the federal executive at Washington and by each house of Congress, each of these authorities refusing to entertain—as breaches of the constitution — the complaints forwarded against him by those who had been militarily dealt with under his government."

An act of March 30, 1822, erected Florida into a regularly organized territory, and it followed the Louisiana plan of paying no regard to the wishes of the people. Like the act of March 26, 1804, creating the territory of Orleans, the Florida act of 1822 put legislative power in the hands of a Governor and a legislative council of thirteen, to be appointed annually by the President, by and with the advice and consent of the Senate, and the Governor and a majority of the council were empowered to alter or repeal all the laws in existence in Florida at the time of the passage of that act.

By the treaty of Guadalupe Hidalgo of February 2, 1848, at the close of the war with Mexico, the United States gained political possession of California and New Mexico, of which it had secured military possession in 1847. The discovery of gold by James W. Marshall near Sutter's mill in California, January 24, 1848, nine days before the treaty of Guadalupe Hidalgo was signed, which discovery did not become known either in the United States or Mexico until several weeks later, sent such a stream of immigrants into California from the four quarters of the globe that it was knocking for admission as a state before Congress had time to organize it into a territory. An act creating it a state, after a contest which caused a greater excitement throughout the country than any other question which came up in Congress since the admission of Missouri in 1821, was signed by President Fillmore on September 9, 1850, and it went into operation on that day. On December 20, 1849, a state government was installed provisionally in California, and Gen. Bennett Riley, the last of the military governors, laid down his authority on that day. From its acquisition to that time California had been under military rule.

There had been extreme dissatisfaction in California with the government appointed from Washington. The dissatisfaction appeared in two elements of the population. The Mexicans' consent was not asked as to the cession of themselves and their territory to another nation, and at the time of the cession the Mexicans outnumbered all other ingredients of the population. The Mexicans were opposed to American government of all sorts. The Americans wanted a government chosen by the people just as soon as they got into a majority among the people, which was before the close of the year 1848. Gen. Riley, who arrived in California on April 12, 1849, was told by the Secretary of War, George W. Crawford, "to assume the administration of civil affairs in California, not as a military governor, but as the executive of the existing civil government." He issued a proclamation which, in order to overcome the popular antipathy to a military regime, proposed a scheme of civil government which he told the Californians should be only temporary, but which would have to be obeyed while it lasted.

The situation in California was like that which existed in Louisiana just after the annexation of that province. The laws of the preceding government —that of Spain in the Louisiana case and Mexico's in that of California— were to remain in operation until repealed in a constitutional way, except where they conflicted with the constitution, laws or treaties of the United States. These old Mexican laws, the Californians were informed, could not be repealed by any provisional government set up in California until California should be admitted to statehood. The only authority competent to repeal them was the Congress of the United States. The people declared that taxation without representation was anti-American. They could not, as Bancroft remarks, see "what constitutional power the President had to govern a territory by appointing a military executive in time of peace, or any at all before the Mexican laws had been repealed, much less what right the Secretary of War had to instruct Gen. Riley to act as civil governor." Despite the irrepressible conflict between the practice of Riley and his predecessors and the doctrine of the Declaraton of Independence Riley's regime was maintained until superseded by the state government.

In the case of Alaska, purchased from Russia under the treaty signed March 30, 1867, the divergence between theory and practice has been particularly divergent. Its inhabitants were not consulted as to the transfer of authority over them, and their locality has not yet received the full territorial status accorded to New Mexico, Arizona and Oklahoma. Unlike those territories, Alaska has never received a local Legislature, is not represented in the House of Representatives by a delegate, and is directly under the control of Congress.

CHARLES M. HARVEY.

A NEW PEN.

(Chicago Chronicle.)

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